

**PART II – CONTRACT CLAUSES****SECTION I****CONTRACT CLAUSES****52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<u>Federal Acquisition Regulations</u>	<u><a href="http://www.arnet.gov/far/">http://www.arnet.gov/far/</a></u>
<u>Department of Energy Acquisition Regulations</u>	<u><a href="http://professionals.pr.doe.gov">http://professionals.pr.doe.gov</a></u>

**The following FAR Clauses are incorporated by reference:**

- I.1 52.202-1 DEFINITIONS (JUL 2004)**
- I.2 52.203-3 GRATUITIES (APR 1984)**
- I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**
- I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)**
- I.5 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**
- I.6 52.203-8 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)**
- I.9 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)**

- I.10 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**
- I.11 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007)**
- I.12 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)**
- I.13 52.215-2 AUDIT AND RECORDS - NEGOTIATION (MAR 2009)**
- I.14 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)**
- I.15 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997)**
- I.16 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997)**
- I.17 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)**
- I.18 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (If applicable)**
- I.19 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)**
- I.20 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)**
- I.21 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002)/DEAR 952.216-7, ALTERNATE II**
- I.22 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005)**
- I.23 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**
- I.24 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) ALTERNATE II (OCT 2001)**
- I.25 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)**

- I.26 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING (APR 2008)**
- I.27 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM RE-REPRESENTATION (JUNE 2007)**
- I.28 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**
- I.29 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**
- I.30 52.222-3 CONVICT LABOR (JUN 2003)**
- I.31 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005)**
- I.32 52.222-6 DAVIS-BACON ACT (JUL 2005)**
- I.33 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**
- I.34 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**
- I.35 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)**
- I.36 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**
- I.37 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)**
- I.38 52.222-12 CONTRACT TERMINATION - DEBARMENT (FEB 1988)**
- I.39 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**
- I.40 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**
- I.41 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)**
- I.42 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)**
- I.43 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**
- I.44 52.222-26 EQUAL OPPORTUNITY (MAR 2007)**
- I.45 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

- I.46 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**
- I.47 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**
- I.48 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**
- I.49 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007)**
- I.50 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:  
It is not a Wage Determination*

<b>EMPLOYEE CLASS</b>	<b>MONETARY WAGE-FRinge BENEFITS</b>
Guards	17.57
Boiler Operator Helper	17.42
Carpenter	22.81
Carpenter, Apprentice	17.42
Chemical Operator	22.81
Electrician	24.11
Electrician, Apprentice	17.42
Hazwat	22.81
Heavy Equip Operator	24.11
Indus Vacuum Ldr Oper	20.16
Industrial Mechanic	24.11
Instrument Mechanic, Apprentice	17.42
Laborer, General	12.69
Laborer, Transportation	14.27
Laundry Worker	14.27
Locomotive/Switchman	20.16
Machinist	24.11
Mason	22.81
Millwright	24.11
Millwright, Apprentice	17.42

<b>EMPLOYEE CLASS</b>	<b>MONETARY WAGE-FRINGS BENEFITS</b>
Motor Vehicle Operator	20.16
Oiler	17.42
Painter	22.81
Pipefitter	24.11
Pipefitter, Apprentice	17.42
Porter	14.27
Private Motor Carrier Oper	21.49
Profess Warehouse Attend	19.00
Pump Operator	17.42
QA Checker	17.57
Respirator Wash	17.42
Rigger	24.11
Stationary Engineer	24.11
Waste Water Plant Operator	22.81
Water Plant Operator	22.81
Welder	24.11
Mailroom Supply Specialist	15.71
Word Processing Tech II	15.71
Accounting Tech II	17.57
Info/Records Spec II	17.57
Information Management Tech	21.78
Inventory Supply Spec	21.78
Medical Assistant	17.57
Procurement Tech II	19.60
Secretary III	21.78
Engineer Aide II	17.57
Environ/Lab Tech II	17.57
Info/Records Spec III	21.78
Lead Mailroom Supply Spec	21.78
Procurement Tech III	21.78
Sr. Repro Equip Operator	17.57
Quality Verifier II	21.78
Env/Lab Technician III	21.78
Health Physics Tech III	26.64
Drafter III	21.78
Rad Control Tech III	26.64
Sr. Accounting Tech	21.78
Sr. HR/Industrial Rel Spec	38.64
Engineer Aide III	21.78
Sr. Graphics Artist	26.64
Engineer Technician	26.64
Sr. Drafter	26.64

<b>EMPLOYEE CLASS</b>	<b>MONETARY WAGE-FRINGS BENEFITS</b>
Sr. Env/Lab Tech	26.64
Sr. Executive Secretary	26.64
Sr. Fire Ftr/Em Response Spec	21.78
Sr. Rad Con Tech	26.64
Sr. Health Phys Tech	26.64
Sr. Indust Hygiene Tech	26.64
Sr. Quality Verifier	26.64

*Rates as of 2008, subject to escalation.*

**I.51 52.222-50 COMBATING TRAFFICKING IN PERSONS (AUG 2007)**

**I.52 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)**

- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

<b>Material (If none, insert "None")</b>	<b>Identification No.</b>

- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

**I.53 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) ALTERNATE II (AUG 2003)**

**I.54 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

**I.55 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)**

**I.56 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)**

(a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**I.57 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)**

**I.58 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

**I.59 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

**I.60 52.224-2 PRIVACY ACT (APR 1984)**

**I.61 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)**

**I.62 52.227-3 PATENT INDEMNITY (APR 1984)**

**I.63 52.228-7 INSURANCE – LIABILITY TO THIRD PERSONS (MAR 1996)**

**I.64 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**

**I.65 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)**

- I.66 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**
- I.67 52.232-17 INTEREST (JUN 1996)**
- I.68 RESERVED**
- I.69 52.232-22 LIMITATION OF FUNDS (APR 1984)**
- I.70 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**
- I.71 52.232-25 PROMPT PAYMENT (OCT 2003)**
- I.72 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER-OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)**
- (b) Mandatory submission of Contractor's EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by **no later than 15 days prior to submission of the first request for payment**. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).
- I.73 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)**
- I.74 52.233-3 PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)**
- I.75 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**
- I.76 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)**
- I.77 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**
- I.78 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**
- I.79 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**
- I.80 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**
- I.81 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)**



- I.82 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)
- I.83 52.242-13 BANKRUPTCY (JUL 1995)
- I.84 52.243-2 CHANGES – COST REIMBURSEMENT (AUG 1987) ALTERNATE 1 (APR 1984)
- I.85 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984)
- I.86 52.243-7 NOTIFICATION OF CHANGES (APR 1984)
- I.87 52.244-2 SUBCONTRACTS (JUN 2007)

- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: **to be determined by Contracting Officer's letter.**
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: **TBD.**

- I.88 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)
- I.89 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)
- I.90 52.245-1 GOVERNMENT PROPERTY (JUNE 2007)
- I.91 52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)
- I.92 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

- (b) If the Government is shown as the consignor or the consignee, the annotation shall be: Transportation is for the **Department of Energy** and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.
- (c) If the Government is not shown as the consignor or the consignee, the annotation shall be: Transportation is for the **Department of Energy** and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. **DE-EM0000440. This may be confirmed by contacting the person listed in Section G of this contract.**

- I.93 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)
- I.94 52.248-1 VALUE ENGINEERING (FEB 2000)

- I.95 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)**
- I.96 52.249-14 EXCUSABLE DELAYS (APR 1984)**
- I.97 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**
- I.98 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**
- I.99 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)**
- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.
  - (b) The use in this solicitation of any **Department of Energy Acquisition Regulation (48 CFR Chapter 9)** provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.
- I.100 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**
- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
  - (b) The use in this solicitation or contract of any **Department of Energy Acquisition Regulation (48 CFR Chapter 9)** clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.
- I.101 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**
- The following DEAR Clauses are incorporated by reference:**
- I.102 952.202-1 DEFINITIONS (MAR 2002)**
- I.103 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**
- I.104 952.204-2 SECURITY (MAY 2002)**
- I.105 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**
- I.106 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)**
- I.107 952.204-73 FACILITY CLEARANCE (MAY 2002)**

- I.108 952.204-75 PUBLIC AFFAIRS (DEC 2000)**
- I.109 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)**
- I.110 952.208-70 PRINTING (APR 1984)**
- I.111 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)  
ALTERNATE I (JUN 1997)**
- I.112 952.219-70 DOE MENTOR-PROTEGE PROGRAM (MAY 2000)**
- I.113 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION  
EXPOSURE RECORDS (APR 1984)**
- I.114 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT –  
SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED  
INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH  
(JAN 2004)**
- I.115 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**
- I.116 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**
- I.117 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)**
- I.118 952.231-71 INSURANCE-LITIGATION AND CLAIMS (APR 2002)**
- I.119 952.247-70 FOREIGN TRAVEL (DEC 2000)**
- I.120 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**
- I.121 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)**
- I.122 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)**
- I.123 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)**
- I.124 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)**
- I.125 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH  
INTO WORK PLANNING AND EXECUTION (DEC 2000)**
- I.126 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES  
(DEC 2000)**

- I.127 970.5226-1 DIVERSITY PLAN (DEC 2000)**
- I.128 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)**
- I.129 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)**
- I.130 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)**
- I.131 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**
- I.132 970.5227-6 PATENT INDEMNITY SUBCONTRACTS (DEC 2000)**
- I.133 970.5227-7 ROYALTY INFORMATION (DEC 2000)**
- I.134 970.5227-9 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)**
- I.135 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NON-PROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002)**
- I.136 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR -PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)**
- I.137 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000) ALT II (DEC 2000)**
- I.138 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000) The provisions of this clause only apply to the Pay and Benefits provisions in Section H.20(e)(1) and/or other accounting practices approved or directed by the Contracting Officer.**

**The following Clauses are incorporated in full text:**

**I.139 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
  - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

- (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall-
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

**I.140 52.219-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)**

- (a) Exceptions from cost or pricing data.
- (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
    - (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
    - (ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the

commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

- (A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;
  - (B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
  - (C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.
- (b) Requirements for cost or pricing data. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
  - (2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

**I.141 52.222-30 DAVIS BACON ACT – PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)**

- (a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.
- (b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—
  - (1) Incorporation of the Department of Labor’s wage determination applicable at the exercise of the option to extend the term of the contract;
  - (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
  - (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

**I.142 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

- (a) Definition. As used in this clause—

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-

security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

- (c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.
- (d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.
- (e) The requirement to post the employee notice in paragraph (b) does not apply to—
  - (1) Contractors and subcontractors that employ fewer than 15 persons;



- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
  - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
  - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
- (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.
- (f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—
  - (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
  - (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
  - (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

- (g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**I.143 52.225-11 BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JAN 2006)**

- (a) Definitions. As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems

are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

- (2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

(none)

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

- (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
- (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
- (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include

adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction material description	Unit of measure	Quantity	Price (dollars) <sup>1</sup>
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

<sup>1</sup>Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach a copy of response; if oral, attach summary.

Include other applicable supporting information.

#### **I.144 952.215-70 KEY PERSONNEL (DEC 2000)**

- (a) The personnel listed in Section J, Attachment F, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

#### **I.145 952.242-70 TECHNICAL DIRECTION (DEC 2000)**

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
  - (1) Providing direction to the Contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual SOW.

- (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
  - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the DOE.
- (b) The Contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
  - (1) Constitutes an assignment of additional work outside the SOW;
  - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
  - (3) Changes contract cost, the fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform to the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the CO in writing within five working days after receipt of any such instruction or direction and must request the CO to modify the contract accordingly. Upon receiving the notification from the Contractor, the CO must:
  - (1) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
  - (2) Advise the Contractor in writing within a reasonable time that the DOE will issue a written change order; or



- (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and CO either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause in Section I, 52.233-1 "Disputes."

**I.146 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**

- (a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (b) The Contractor shall include the substance of this clause including this paragraph (b), in all subcontracts.

**I.147 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT – REPORTING REQUIREMENTS (MAR 2009)**

- (a) *Definitions.* As used in this clause—

“*Contract*,” as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16.

“*First-tier subcontract*” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

“*Jobs created*” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act).

This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

*“Jobs retained”* means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

*“Total compensation”* means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
  - (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - (5) Above-market earnings on deferred compensation which is not tax-qualified.
  - (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.
- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
  - (c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

- (d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.
- (1) The Government contract and order number, as applicable.
  - (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
  - (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
  - (4) Program or project title, if any.
  - (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
  - (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
  - (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—
    - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101).  
  
This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
    - (ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.
  - (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
    - (i) In the Contractor's preceding fiscal year, the Contractor received—

- (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
  - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:
- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
  - (ii) Name of the subcontractor.
  - (iii) Amount of the subcontract award.
  - (iv) Date of the subcontract award.
  - (v) The applicable North American Industry Classification System (NAICS) code.
  - (vi) Funding agency.
  - (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
  - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
    - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
    - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
  - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

**I.148 52.225-23 REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS – BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009) Alternate I (MAR 2009)**

**This FAR Clause 52.225-23 is for Recovery Act work only.**

- (a) Definitions. As used in this clause—
  - “Bahrainian, Mexican, or Omani construction material”* means a construction material that—
    - (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
    - (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in

Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

*“Construction material”* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*“Domestic construction material”* means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

*“Foreign construction material”* means a construction material other than a domestic construction material.

*“Free trade agreement (FTA) country construction material”* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

*“Least developed country construction material”* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*“Manufactured construction material”* means any construction material that is not unmanufactured construction material.

*“Recovery Act designated country”* means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

*“Recovery Act designated country construction material”* means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

*“Steel”* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

*“United States”* means the 50 States, the District of Columbia, and outlying areas.

*“Unmanufactured construction material”* means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*“WTO GPA country construction material”* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

## (b) Construction materials.

- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—
  - (i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
  - (ii) The Buy American Act providing a preference for unmanufactured domestic construction material.
- (2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

-----NONE-----

*[Contracting Officer to list applicable excepted materials or indicate “none”.]*

- (4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
  - (i) The cost of domestic construction material would be unreasonable.
    - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;
    - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
  - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.



- (c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.
- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Cost;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.
  - (iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
  - (3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

<i>Construction material description</i>	<i>Unit of measure</i>	<i>Quantity</i>	<i>Cost (dollars)</i>
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

**I.149 52.225-24 NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS – BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009) Alternate I (MAR 2009)**

**This FAR Clause 52.225-24 is for Recovery Act work only.**

- (a) Definitions. “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-23).
- (b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23.

- (c) Evaluation of offers.
  - (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—
    - (i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and
    - (ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.
  - (2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.
- (d) Alternate offers.
  - (1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.
  - (2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
  - (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.